

# YOUTH SERVICES POLICY

<b>Title:</b> Americans with Disabilities Act – (Employees, Applicants, Candidates, Visitors) <b>Next Annual Review Date:</b> 05/29/2010	<b>Type:</b> A. Administrative <b>Sub Type:</b> 2. Personnel <b>Number:</b> A.2.13
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<b>References:</b> ACA Standards 2-CO-1C-09, 2-CO-1C-09-1, 2-CO-1C-10, 2-CO-2B-04 (Administration of Correctional Agencies; 4-JCF-6C-02 (Performance-Based Standards for Juvenile Correctional Facilities); Civil Service Manual, Part 18; Federal Register, July 26, 1991(28 CFR Part 35), Nondiscrimination on the Basis of Disability in State and Local Services - Final Rule; LAC 48:I. Chapter 53 section 5311 A(5) and Chapter 79 section 7959 O(d) (Louisiana Administrative Code); La. R.S. 46:1403, 1404 and 1413(F); Child Protection Act 15:575 thru 587.3; YS Policies A.2.1 "Employee Manual", A.2.5 "Family and Medical Leave of Absence", A.2.10 "Hiring for Corrections Cadet and Promotions for Sergeant-Master, Lieutenant and Captain", and A.2.28 "Return to Work"; Youth Services Affirmative Action Plan; Index of Essential Job Functions and Essential Functions Form	
<b>STATUS: Approved</b>	
<b>Approved By:</b> Mary L. Livers, MSW, Ph.D. Deputy Secretary	<b>Date of Approval:</b> 05/29/2009

## I. AUTHORITY:

Deputy Secretary of Youth Services as contained in La. R.S. 24:50-59, La. R.S. 36:405., La. R.S. 46:225, et seq; Title VII of the Civil Rights Act of 1964 and 1991; Americans with Disabilities Act of 1990 (ADA) as amended; and La. Civil Rights for Handicapped Persons. Deviation from this policy must be approved by the Deputy Secretary.

## II. PURPOSE:

- A. To establish the Deputy Secretary's commitment to equal employment opportunities for all employees, applicants, and candidates for employment.
- B. To establish formal procedures regarding the reasonable accommodation of employees, the public, applicants and candidates.
- C. To constitute the Index of Essential Job Functions as part of this policy.

### III. APPLICABILITY:

All applicants, candidates, visitors, and employees of Youth Services (YS).

### IV. DEFINITIONS:

***Americans with Disabilities Act (ADA)*** - a comprehensive law passed by Congress to protect disabled persons from discrimination in employment, hiring, transportation, access to public facilities and services, and telecommunications.

***Applicant*** - a person who has applied for a job and whose qualification for such is unknown.

***Candidate*** - a person who has successfully passed the required test and/or meets the Civil Service minimum qualifications for the job sought.

***Disability*** - with respect to an individual, the term disability means:

- a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- a record of such an impairment; or
- being regarded as having such an impairment.

***Equal Employment Opportunity (EEO)*** - the operation of a system of human resource administration which ensures an environment that will provide an equal opportunity for public employment to all segments of society based on individual merit and fitness of applicants without regard to race, color, religion, sex, age, national origin, political affiliation or disability (except where sex, age or physical requirements constitute a bonafide occupational qualification necessary to the proper and efficient operation of the agency/organization). The Equal Employment Opportunity Commission (EEOC) is the federal regulatory body for EEO related complaints and charges.

***Essential Functions*** - basic job duties that an employee/applicant must be able to perform, with or without reasonable accommodation.

***Family and Medical Leave*** - leave for which an employee may be eligible under the provisions of the Family and Medical Leave Act of 1993. (See YS Policy No. A.2.5 "Family and Medical Leave of Absence" for eligibility guidelines.)

***Impairment: Physical and Mental***

***Physical*** - a physiological disorder or condition, cosmetic disfigurement or anatomical loss impacting one or more body systems (neurological, musculoskeletal, respiratory, cardiovascular, digestive, lymphatic, and endocrine).

***Mental*** - a mental or psychological disorder, which include mental retardation, emotional or mental illness, and organic brain syndrome.

***Qualified Individual With A Disability*** - an individual with a disability (as previously defined herein) who can perform the essential functions of the job with or without reasonable accommodation.

***Unit Head*** - The Deputy Secretary, Deputy Assistant Secretaries, Facility Directors, and Regional Managers.

***YS Central Office*** - Offices of the Deputy Secretary, Deputy Undersecretary, Deputy Assistant Secretaries, and their support staff.

**V. POLICY:**

It is the Deputy Secretary's policy to assure equal opportunities to all employees, applicants and candidates for employment without regard to disability, except where physical requirements constitute a bonafide occupational qualification necessary for proper and efficient operations of the agency. Equal opportunities will be provided for employees in areas of compensation, benefits, promotion, recruitment, training, and all other conditions of employment. Equal employment opportunity information will be posted in prominent accessible places at each employment location.

**VI. PROCEDURES:**

**A. Coordination of ADA Matters**

The Central Office Human Resources Director will serve as the YS ADA Coordinator.

The Coordinator is charged with reviewing, recording, and monitoring YS ADA matters and will also advise and make recommendations to the Deputy Secretary or designee.

Each Unit Head will designate an ADA Coordinator.

**B. Requests for Accommodation**

A qualified individual with a known disability of a permanent nature should be accommodated where reasonably possible, providing the accommodation does not constitute a danger to the individual or others, and does not create undue hardship on YS or its employees. If such individual is an employee or a candidate for employment, the individual must be able to perform the essential functions of the job with said accommodation.

Any person (employee, applicant, candidate, or visitor) may complete a "Request for Accommodation" form [Attachment A.2.13 (a)]. The person completing the form must forward it to the designated Unit ADA Coordinator for processing and action as instructed by the Unit Head. The Unit Head will ensure that the person is notified of and receives a copy of the decision. A copy of the completed Request for Accommodation form, along with the Unit Head's response to the request will be forwarded to the YS ADA Coordinator.

Accommodation may also be requested by employees and candidates in the space provided on the pertinent Essential Functions Form. Such request will be processed in the same manner as the "Request for Accommodation" form described above.

**C. Essential Job Functions**

**1. General Requirements**

Employment candidates must complete an Essential Functions Form at the time of interview for employment and/or return to employment. Employees may be required to update the Essential Functions Form when deemed necessary by the Unit Head

The Index of Essential Job Functions contains the Essential Functions Form for each job category used by YS. The Index is maintained in each Human Resources Office. Revisions to the Index require the approval of the Deputy Secretary.

**2. Employee and Unit Specific Requirements**

Employees may be required by the Unit Head to complete and update-to-date Essential Functions Form under the following conditions (not necessarily all inclusive):

- a. exhaustion of sick leave and exhaustion of Family and Medical Leave Act (FMLA) entitlement if applicable;
- b. expressed inability to participate in a mandatory work-related activity, such as training, and/or to perform essential job functions; and/or
- c. determination by the appropriate supervisor(s) that the employee appears to be unable to perform essential job functions.

When any of the described conditions exist, the Unit Head will require the employee to provide an updated Essential Functions Form and Medical Certification Form [Attachment A.2.13 (b)] from the employee's health care provider so the employee's status under the ADA can be assessed. The Medical Certification Form must include: a prognosis; whether the condition is temporary or permanent; when the condition began; the expected date of return to duty; whether the employee is able to perform the essential functions of his job with or without accommodation and a description of the accommodation needed. In certain situations, a second opinion by an independent physician may be appropriate. This opinion would be at the Unit's expense.

D. Determination of Disability, Accommodation and Return to Work

1. Upon receipt of the receipt of the information requested relative to the employee's condition, the Unit Head will forward copies to the YS ADA Coordinator. The Unit Head, with the assistance of the YS ADA Coordinator, will determine whether the request/condition qualifies for ADA accommodation and take action as appropriate using the following guidelines:
  - a. If an employee falls under Section 6.C.2.b or c. and the Unit Head is unable to determine whether this is due to a temporary or permanent condition, the Unit Head may place the employee in forced leave consistent with Civil Service rules until such time that a determination can be made.
  - b. If the condition is not qualifying, leave under FMLA (if eligible) or a temporary duty assignment may be appropriate. When feasible, employees who are temporarily disabled may be allowed to return to work in other assignments. However, if such employee is unable to return to work in any manner and has exhausted his sick leave and FMLA entitlement, separation for exhaustion of sick leave is an option.

- c. If the disability is qualifying but no accommodation is available or the requested accommodation cannot be granted, the Unit Head will take appropriate action and then forward a copy of the completed Request For Accommodation form and/or the Essential Functions Form relating to any request for accommodation to the YS ADA Coordinator.
2. Reasonable accommodation(s) should be considered for employees who are qualified individuals with a permanent disability prior to separation from employment due to exhaustion of sick leave. Employees subject to such separation should also have exhausted any FMLA entitlement.

**E. Conciliation Options ADA Concerns**

1. When a person feels that he/she has experienced discrimination in any manner or is not satisfied with the results of his request for accommodation, he/she may seek redress through the YS grievance process (YS "Employee Grievance Procedure", Policy No. A.2.46); "Employee Manual", Policy A.2.1; through the Equal Employment Opportunity Commission for employment related complaints; the U.S. Department of Justice (USDOJ) for issues not related to employment and/or the Louisiana Civil Service Commission.
2. Persons are encouraged to use the internal procedures to address and resolve complaints to the extent possible. Use of these internal procedures does not restrict a person from filing with the appropriate federal agency prior to exhaustion of the YS internal process.

**F. YS Conciliation of EEO and ADA\* Matters**

The YS Central Office's Human Resources staff, along with Legal Services, will coordinate the YS response(s) to complaints and charges of discrimination regarding equal employment opportunity matters. Generally, complaints/charges may be addressed through the internal grievance procedure when such a grievance has been filed and heard at the appropriate unit levels.

For formal charges generated by the EEOC or the USDOJ, the Unit Head, a YS attorney, other appropriate personnel and the Human Resources Manager of the Central Office will develop the YS response and conciliation opinion (if applicable). Any unit receiving a "Notice of Charge of Discrimination" document or similar notice from the USDOJ must forward the notice to YS Central Office's Human Resources Office upon receipt.

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Responses to the charges will be under the signature of the Deputy Secretary or designee. The Deputy Secretary's approval is required for acceptance or presentation of conciliation agreements or settlements.

- \* This section applies when ADA related matters are not resolved under conditions outlined in Section VI.C.

#### **G. General**

Additional information pertaining to EEO and ADA is available in the Human Resources Office of any YS unit or office.

**Previous Regulation/Policy Number:** A-02-017 / A.2.13

**Previous Effective Date:** 06/20/2000

**Attachments/References:**



A.2.13 (b) MEDICAL CERTIFICATION FORM 05-09.doc



A.2.13 (a) REQUEST FOR ACCOMMODATION 05-09.doc